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UNCLAS SECTION 01 OF 03 ANKARA 001395

DEPT PASS USTR FOR MMOWREY
TREASURY FOR OASIA
USDOC/ITA/MAC/KNAJDI
DEPT PASS EXIM FOR MARGARET KOSTIC
USDA OSEC FOR DEP U/S TERPSTRA
USDA FAS FOR OA YOST; ITP/SHEIKH; FAA/DEVER

SENSITIVE
SIPDIS

E.O. 12958: N/A
TAGS: EINV ECON BEXP TU
SUBJECT: PARLIAMENT AGAIN APPROVES FOREIGN LAND PURCHASES IN TURKEY

REF: A) ANKARA 699, B) ANKARA 723

¶1. (SBU) Summary. In separate decisions in January and April 2008, the Constitutional Court struck down portions of both the Title Deed Law and the Foreign Direct Investment Law, effectively barring real estate purchases by foreign real persons or corporations (reftels). In an amendment to the Title Deed Law on July 3, the GOT used one piece of legislation to address the concerns raised in both cases and brought purchase by both real and legal persons under the same legal umbrella. In the new law, it restored the right to purchase property, but placed several new restrictions on foreign property ownership by real persons. At the same time, it also opened up previously forbidden military zones to foreign companies under certain conditions. On the whole, it is a positive step toward calming skittish investors, but may still be subject to legal challenge in the future. End Summary.

¶2. (U) Following the law's entry into force on July 15, the Land Registry Office announced that it would again be taking applications from foreign entities for real property purchases. As the court rulings were not retroactive, any land already legally purchased by foreign individuals or companies remains unaffected.

New Limits on Purchases by Foreign Individuals
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¶3. (U) Under the amendment passed July 3, foreign real persons are again allowed to buy up to 2.5 hectares of property (aggregate across Turkey). Previously the Cabinet had been authorized to increase this amount to 30 hectares on an individual basis. This discretion was one of the reasons the Court found the previous law unconstitutional, and there is no discretion in the new law.

¶4. (U) As under the prior law, all properties acquired by real persons must be located within a proper municipal development zoning plan (which effectively forbids purchase of property in a village by foreigners, as they do not have zoning plans). What is new is that the Governor's Office in each province now will be responsible for updating the zoning plan information for the province every year and for notifying a commission headed by the Land Registry Office about any changes.

¶5. (U) The earlier law set a general limit where only 0.5 percent of the "developable" land of a province could be owned by foreign real persons. The Court said that this amounted to all of the "developable" land in some provinces with large forests, lakes or public land. Under the new law, within any given development plan/town, no more than 10 percent of the land may be owned by foreign real persons. The Cabinet may further restrict the 10

percent maximum for infrastructural, economic, energy, environmental, agricultural, security or cultural reasons.

¶6. (U) As was previously the case, purchase of land by real persons in military areas is forbidden. The Cabinet may also still designate other areas as "strategically important" - such as watersheds - and sale to real persons in these areas is also forbidden. The Ministry of Defense and the Ministry of Interior will provide maps of strategic areas to the Land Registry Office on a yearly basis.

¶7. (SBU) Comment: For several reasons, it is difficult to assess how restrictive these new requirements for real persons actually are. The Cabinet has not yet designated "strategically important" areas, nor indicated in which development zones it will restrict foreign ownership to less than 10%. Provinces have not yet published all zoning plans. Published statistics only show the total amount of land owned by foreigners in each province, not the percentage of land that they own in a given zoning plan, making it impossible to calculate how much is still available under the 10% limit. According to Director General Mehmet Zeki Adli at the Land Registry Office, no zoning plan in Turkey is currently anywhere near the 10 percent limit, and they do not expect the rule to be a problem for individual foreign investors. Land Registry Office statistics show that foreign real persons currently own only 41,723,868 sq. meters of land in Turkey (roughly 16 sq. miles), a tiny fraction of Turkey's total land area. However, in some towns with high foreign investment (especially along the coast), the percentage restriction may inhibit new investment (or force foreigners to consider corporate ownership).

¶8. (SBU) Comment (cont'd): The restrictions on ownership by foreign

real persons potentially violate the terms of the U.S.-Turkey Bilateral Investment Treaty (BIT), which states in Article II(1): "Each Party shall permit in its territory investments, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investments of nationals or companies of any third country, and within the framework of its laws and regulations, no less favorable than that accorded in like situations to investments of its own nationals and companies." Because the BIT only requires MFN and not national treatment at the time of establishment of an investment, however, potential violations would seem be limited to cases where existing individual investments were not allowed to expand. End comment.

Almost No Limits for Companies

¶9. (U) The new law's approach to companies is very similar to the approach which had previously been part of the Foreign Direct Investment Law. The only substantive changes are that military land can now be sold to foreign firms (with the approval of the Turkish General Staff), land in special non-military security areas can also be sold (with the approval of the local Governor) and a new process will be set up for provinces to certify that the sale of land to a company is not in a military or "strategically important" area.

¶10. (U) Wholly foreign companies (with no subsidiary in Turkey) may purchase land only where permitted by other specialized laws, such as the Industrial Zone Law, the Petroleum Law or the Tourism Incentive Law (this is not a new requirement). Companies established in Turkey with foreign capital may acquire real estate in accordance with the business activities set out in their articles of association.

¶11. (U) There is no specified limit on how much land may be owned by a foreign company established in Turkey nor are there any percentage restrictions as there are with real persons. For wholly foreign companies, the conditions of the specialized law permitting the company's investment may limit their ownership. Companies may also be excluded, by Cabinet decision, from purchasing in the same "strategic areas" referenced in para 6.

¶12. (SBU) According to the Land Registry Office, a committee headed

by the governor's office will be established in each town to evaluate applications for purchase of land by a company to ensure that the property is not in a strategic or restricted area. They will then issue a permit that companies can take to the Land Registry Office to acquire the deed. The Land Registry Office expects to publish in the near future the implementing regulation which will allow governors' offices to issue permits to foreign companies. Once that takes effect, there should be no further impediment to the acquisition of land by a foreign firm.

Reaction and Impact on Investment

¶13. (SBU) In a conversation about the amendment, Treasury Foreign Capital Deputy Director General Murat Alici said the restrictions placed on foreigners' property acquisition in Turkey were not different from those implemented by several European countries. Turkey previously had the most liberal regime, according to Alici, and this amendment brought its legislation in line with other European countries' standards. Alici noted that the GOT also added provisions to regulate companies' acquisition of property in Turkey, combining what had previously been two separate laws. "In this amendment, the GOT addressed the concerns listed in the second Constitutional Court ruling referencing the Foreign Investment Law, which banned foreign companies' property acquisition in Turkey. This amendment also has sufficient language to regulate the companies' acquisition, so the GOT may not have to issue another amendment for the second Court decision," said Alici.

¶14. (SBU) Business reaction has so far been muted, mainly because the ruling prohibiting foreign companies from purchasing land was not scheduled to take effect until October. Several organizations we contacted were unaware of both the ban and the new law, and one company operating in the real estate sector believed that the Court's decisions applied only to foreign individuals. Other firms are still digesting the new requirements. The International Investors' Association (YASED) has established a committee to evaluate the impact of this legislation on foreigners' access to property in Turkey. The committee has not finalized its

investigation yet, but they hope to issue a report soon.

¶15. (SBU) Comment: Much as we would like to say that the ability of foreigners to purchase real property in Turkey has been finally decided, it is still possible that we will see another legal challenge to foreign land ownership. There is a potential conflict, for example, between this latest Title Deed Law and the Foundations Law about whether foreign foundations have the right to own real property: the Foundations Law says they can under certain circumstances, but the Title Deed Law restricts foreign ownership to foreign individuals and corporations. This Title Deed Law is the third iteration in five years, and the repeated cycle of legislation-court challenge-new legislation does nothing to help the atmosphere of legal uncertainty, often cited as a key investor concern about investing in Turkey.

WILSON